

No. 49427-2-II

THE COURT OF APPEALS FOR THE STATE OF WASHINGTON  
DIVISION II

---

**STATE OF WASHINGTON,**

Respondent,

vs.

**NATRONE D. BOSTICK,**

Appellant.

---

Appeal from the Superior Court of Washington for Lewis County

---

**Respondent's Brief**

---

JONATHAN L. MEYER  
Lewis County Prosecuting Attorney



By:

---

SARA I BEIGH, WSBA No. 35564  
Senior Deputy Prosecuting Attorney

Lewis County Prosecutor's Office  
345 W. Main Street, 2nd Floor  
Chehalis, WA 98532-1900  
(360) 740-1240

## **TABLE OF CONTENTS**

TABLE OF AUTHORITES .....	ii
I. ISSUES.....	1
II. STATEMENT OF THE CASE .....	1
III. ARGUMENT .....	2
A. THE TRIAL COURT INQUIRY OF BOSTICK REGARDING HIS ABILITY TO PAY WAS SATISFACTORY PRIOR TO ITS IMPOSITION OF NON-MANDATORY LEGAL FINANCIAL OBLIGATIONS.....	2
IV. CONCLUSION.....	5

## **TABLE OF AUTHORITIES**

### **Washington Cases**

<i>State v. Blazina</i> , 182 Wn.2d 827, 344 P.3d 680 (2015) .....	2, 3
<i>State v. Duncan</i> , 185 Wn.2d 430, 374 P.3d 83 (2016) .....	3
<i>State v. Mathers</i> , 193 Wn. App. 913, P.3d 1163 (2016), <i>review denied</i> , 186 Wn.2d 1015 .....	5
<i>State v. Seward</i> , 196 Wn. App. 579, __ P.3d __ (2016) .....	5

### **Washington Statutes**

RCW 10.01.160(3) .....	2
------------------------	---

## **I. ISSUE**

- A. Did the trial court fail to consider Bostick's present or future ability to pay prior to imposing non-mandatory legal financial obligations?

## **II. STATEMENT OF THE CASE**

On June 9, 2016, Natrone Bostick pleaded guilty to Count III: Kidnapping in the First Degree, and Count IV: Assault in the First Degree. RP (6/9/16) 6; CP 17-27. The pleas stemmed from an incident in which Bostick and another man broke into the victim's home, beat the victim with a pistol, dragged the victim into another room, tied the victim up, continued to beat the victim with a pistol, and robbed the victim. CP 1-3.

On June 16, 2016, Bostick was sentenced. RP (6/16/16)<sup>1</sup> 2-9; CP 30-39. The court imposed financial obligations, including the \$500 crime victim assessment, \$200 criminal filing fee, \$100 DNA fee, and \$1,972.50 for his court appointed attorney. RP (6/16/16) 7; CP 34. Regarding Bostick's ability to pay, the trial court inquired: "With regard to the financial obligations, is there any physical or emotional or any other reason why you can't work and earn a living

---

<sup>1</sup> It should be noted that there is an error on the cover sheet for the verbatim report of proceedings. The sentencing hearing, which is nine pages long and took place on 6/16/16, has the same cover page as the Plea Hearing, which took place on 6/9/16. The second page of the sentencing transcript clearly states the hearing is on June 16, 2016.

when you're out if you're not in custody?" RP (6/16/16) 6. Bostick replied, "No, Your Honor."

Bostick was sentenced to 60 months on Count III and 120 months on Count IV to run consecutive, for a total of 180 months. RP (6/16/16) 6; CP 32. Bostick timely appeals his sentence. CP 41-42.

The State will supplement the facts as necessary throughout its argument below.

### III. ARGUMENT

#### **A. THE TRIAL COURT INQUIRY OF BOSTICK REGARDING HIS ABILITY TO PAY WAS SATISFACTORY PRIOR TO ITS IMPOSITION OF NON-MANDATORY LEGAL FINANCIAL OBLIGATIONS.**

Bostick argues the trial court imposed discretionary legal financial obligations, the court appointed attorney fees, without considering his financial resources and present or future ability to make payments. This is incorrect. The trial court's consideration was satisfactory given the facts of the case and the inquiry of Bostick. If this Court finds the trial court erred, the correct remedy is to remand this case back to the trial court for the judge to conduct the required inquiry.

In *State v. Blazina* the Washington State Supreme Court determined the Legislature intended that prior to the trial court imposing discretionary legal financial obligations there must be an

individualized determination of a defendant's ability to pay. *State v. Blazina*, 182 Wn.2d 827, 834, 344 P.3d 680 (2015). The Supreme Court based its reasoning on its reading of RCW 10.01.160(3), which states,

The court shall not order a defendant to pay costs unless the defendant is or will be able to pay them. In determining the amount and method of payment of costs, the court shall take account of the financial resources of the defendant and the nature of the burden that payment of costs will impose.

*Blazina*, 182 Wn.2d at 837-38. Therefore, to comply with *Blazina*, a trial court must engage in an inquiry with a defendant regarding his or her individual financial circumstances. *Id.* The trial court must make an individualized determination about not only the present but future ability of that defendant to pay the requested discretionary legal financial obligations before the trial court imposes them. *Id.* In *State v. Duncan*, the Washington State Supreme Court determined that the imposition and collection of legal financial obligations have constitutional implications and may be challenged for the first time on appeal. *State v. Duncan*, 185 Wn.2d 430, 434-38, 374 P.3d 83 (2016).

The State requested and the trial court imposed discretionary legal financial obligations of \$1,972.50 for reimbursement of court appointed attorney fees. RP (6/16/16) 3, 7; CP 34. The trial court

asked Bostick if there was any reason, physical or emotional, why he would be unable to earn a living or work once he was released from custody. RP (6/16/16) 6. Bostick told the trial court there was no reason. RP (6/16/16) 7. Bostick agreed it was just a matter of finding work. *Id.* The nature of Bostick's offenses showed he was physically capable of work. CP 1-3. Bostick beat, physically restrained and moved a grown man, then tied up said grown man, before stealing items from the victim. *Id.* Bostick could not have carried out the crimes he was accused of, and pleaded guilty to, if he was not physically capable of holding down some type of employment. *Id.* Bostick was 19 years old at the time of his sentencing. CP 17; 28. Even if Bostick did the entire amount of time he was sentenced to he would be walking out of prison at the age of 34. CP 28-32. The trial court was aware of all of these factors when he did the inquiry with Bostick. The inquiry was sufficient to get any additional information necessary before making a determination about Bostick's ability to pay his legal financial obligations.

It should be noted, that Bostick also appears to argue, in part, that the \$200 filing fee is not really a mandatory fee unless it is levied after a jury trial. This analysis is incorrect. This Court held the \$200 filing fee was a mandatory financial obligation, not subject to

consideration of an offender's ability to pay. *State v. Seward*, 196 Wn. App. 579, 587, \_\_ P.3d \_\_ (2016), *citing to State v. Mathers*, 193 Wn. App. 913, 376 P.3d 1163 (2016), *review denied*, 186 Wn.2d 1015.

The trial court inquiry was sufficient. This Court should affirm the imposition of the legal financial obligations. If this Court does find the inquiry inadequate, it should remand the case back to the trial court to make the proper inquiry.

#### **IV. CONCLUSION**

The trial court conducted a sufficient inquiry regarding Bostick's ability to pay the discretionary legal financial obligations imposed by the court. Therefore, this Court should affirm the sentence. If this Court finds the inquiry insufficient, it should remand the case back to the trial court to make the proper inquiry and impose legal financial obligations accordingly.

RESPECTFULLY submitted this 13<sup>th</sup> day of January, 2017.

JONATHAN L. MEYER  
Lewis County Prosecuting Attorney



by: \_\_\_\_\_  
SARA I. BEIGH, WSBA 35564  
Attorney for Plaintiff

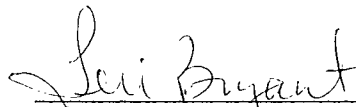


**COURT OF APPEALS FOR THE STATE OF WASHINGTON  
DIVISION II**

STATE OF WASHINGTON,  Respondent,  vs.  NATRONE D. BOSTICK,  Appellant.	No. 49427-2II  DECLARATION OF SERVICE
---	---

Ms. Teri Bryant, paralegal for Sara I. Beigh, Senior Deputy Prosecuting Attorney, declares under penalty of perjury under the laws of the State of Washington that the following is true and correct: On January 13, 2017, the appellant was served with a copy of the **Respondent's Brief** by email via the COA electronic filing portal to Thomas M. Kummerow, attorney for appellant, at the following email addresses: [wapofficemail@washapp.org](mailto:wapofficemail@washapp.org) and [tom@washapp.org](mailto:tom@washapp.org).

DATED this 13<sup>th</sup> day of January, 2017, at Chehalis, Washington.



Teri Bryant, Paralegal  
Lewis County Prosecuting Attorney Office

## LEWIS COUNTY PROSECUTOR

**January 13, 2017 - 2:32 PM**

### Transmittal Letter

Document Uploaded: 6-494272-Respondent's Brief.pdf

Case Name:

Court of Appeals Case Number: 49427-2

**Is this a Personal Restraint Petition?** Yes ☐ No ☒

### The document being Filed is:

Designation of Clerk's Papers

Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: \_\_\_\_\_

Answer/Reply to Motion: \_\_\_\_\_

☒ Brief: Respondent's

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: \_\_\_\_\_

Hearing Date(s): \_\_\_\_\_

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other: \_\_\_\_\_

### Comments:

No Comments were entered.

Sender Name: Teresa L Bryant - Email: [teri.bryant@lewiscountywa.gov](mailto:teri.bryant@lewiscountywa.gov)

A copy of this document has been emailed to the following addresses:

[wapofficemail@washapp.org](mailto:wapofficemail@washapp.org)

[tom@washapp.org](mailto:tom@washapp.org)